FILED
2017 JAN 17 AM 9:38
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

Bank of America, N.A.	**Case No. CV 2016 12 2640**
Plaintiff,	**Judge Craig D. Hedric**
vs.	
Gregory C. Vanover, et al.	**MOTION TO DISMISS PLAINTIFF'S CLAIMS UNDER RULE 41(A)(2)**
Defendants.	

Plaintiff respectfully moves for an order dismissing this action under Rule 41(A)(2) of the Ohio Rules of Civil Procedure, without prejudice and at Plaintiff's costs, for the reason that Plaintiff has elected not to continue prosecuting this action at this time.

Plaintiff moves for an order of dismissal to avoid the possibility of voluntarily dismissing this action twice under Rule 41(A)(1), which might result in an adjudication upon the merits. See, e.g., EMC Mortgage Corp. v. Jenkins, 164 Ohio App.3d 240 (10th Dist. 2005); see also Olynyk v. Scoles, 114 Ohio St.3d 56 (2007) (an order of dismissal under Rule 41(A)(2) does not count as a dismissal under the double-dismissal rule). The risk of inadvertently dismissing an action twice by notice is significant in the foreclosure context. It is not unusual for a foreclosure action to be dismissed and later filed again, sometimes by a different law firm, because of a loss mitigation agreement, bankruptcy filing, or some other reason relevant to a foreclosure action, such as a transfer of the loan or the servicing rights to the loan. As a result, Plaintiff respectfully requests an order of dismissal under Rule 41(A)(2).

Respectfully submitted,

Michael E. Carleton (0083352)
Melissa N. Hamble fka Melissa N. Meinhart (0083909)
Angela D. Kirk (0075177)
Jacqueline M. Wirtz (0090268)
Kyle E. Timken (0071381)
Matthew P. Curry (0078306)
Manley Deas Kochalski LLC
P. O. Box 165028
Columbus, OH 43216-5028
Telephone: 614-222-4921
Fax: 614-220-5613
Email: mec@manleydeas.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Dismiss Plaintiff's Claims Under Rule 41(A)(2) was sent to the following by ordinary U.S. Mail, postage prepaid, on the date indicated below:

Gregory C. Vanover, 5100 Fairfield Avenue, Fairfield, OH 45014

Jane Doe, Name Unknown, the Unknown Spouse of Gregory C. Vanover (if any), 5100 Fairfield Avenue, Fairfield, OH 45014

Honorable Craig D. Hedric, Government Services Center, 315 High Street, Hamilton, OH 45011

Michael E. Carleton
Melissa N. Hamble fka Melissa N. Meinhart
Angela D. Kirk
Jacqueline M. Wirtz
Kyle E. Timken
Matthew P. Curry

January 18, 2017
Dated

16-030980_ERG

MDK) MANLEY DEAS KOCHALSKI

MANLEYDEAS.COM

P.O. BOX 165028
COLUMBUS, OH 43216
P 614-220-5611 | F 614-220-5613

January 13, 2017

OHIO-Butler County Court of Common Pleas
Attention: Clerk's Office
Government Services Center
315 High Street
Hamilton, OH 45011

Re: Bank of America, N.A. v.
Gregory C. Vanover, et al.
Case No. CV 2016 12 2640
Our File No. 16-030980

Dear Sir/Madam:

Enclosed are the following:

- an original and one (1) copy of a Motion to Dismiss Plaintiff's Claims Under Rule 41(A)(2);
- an original and one (1) copy of an Order Dismissing Plaintiff's Claims; and
- a self-addressed, stamped envelope.

Please file the Motion with the Court and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

Very truly yours,

Manley Deas Kochalski LLC

Enclosure

16-030980_ERG